



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 19, 2013, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on February 20, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overpayment of \$873 for the period of July – November, 2013 for the Petitioner's son's failure to report his employment and income.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.

2. On January 4, 2013, Petitioner applied for FS benefits for herself and her adult son. Petitioner reported that the household income consisted of her unearned income of \$1,130.90/month. Petitioner purchases and prepares food for her son.
3. On January 31, 2013, Petitioner's application for FS benefits was approved. Petitioner received \$159 in FS benefits for January, 2013 and \$177/month effective February, 2013. The Notice of Decision issued to the Petitioner informed her that if her household's totally monthly gross income goes over \$1,640, it must be reported to the agency by the 10th day of the next month.
4. In July, 2013, Petitioner's adult son obtained employment. He did not report his employment or wages to the agency. Petitioner reported his employment to the agency via a written note received on October 28, 2013.
5. On September 9, 2013, the agency issued a Notice of Decision to the Petitioner informing her that her FS benefits would increase effective October 1, 2013 to \$181/month. The notice also informs the Petitioner that her household must report to the agency by the 10th day of the next month if gross household income exceeds \$1,681 in any month.
6. Petitioner's son earned \$21,103.36 in the 3rd quarter of 2013. He continues to work for the same employer. On October 30, 2013, the agency sent a request for verification of employment and wages. The Petitioner's son has refused to provide any information or to allow the Petitioner to provide information to determine actual wages so that the agency could properly determine eligibility for FS benefits. Petitioner's employer has also not cooperated.
7. On December 9, 2013, the agency issued a Repayment Agreement to the Petitioner's son stating that he can repay the overissued FS benefits by making monthly payments of \$25. The Petitioner's son did not respond or sign the agreement.
8. On December 9, 2013, the agency issued a Notice of FS Overissuance to the Petitioner informing the Petitioner and her son that the agency will recoup \$873 for an overissuance of FS benefits to the household for the period of July – November, 2013.
9. On December 19, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also, FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also, FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years. *Id.*

"Discovery" is "the date that the ESS [agency] became aware of the potential that an overissuance may exist." BPS/DFS Operations Memo No. 12-20 (effective 4-4-2012). In this case, the agency became aware of a potential for an overissuance in October, 2013. The agency alleges client error due to the Petitioner's son failing to accurately report employment and household income, resulting in the overissuance.

In determining eligibility for FS, the agency must budget the non-exempt earned and unearned income of all household members. Households consist of all persons living in or temporarily absent from the same residence. A food unit is one or more persons who live in the same household and purchase and prepare food together for home consumption. FoodShare Wisconsin Handbook 3.3.1.1.

All adults that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. FSH § 7.3.1.2 and 7 CFR § 273.11(e)(6).

There is no dispute in this case that the Petitioner's son did not report his employment and did not report when household income exceeded reporting limits. Because of his income, as evidenced by the state wage match produced by the agency, the household was over the limit for eligibility for FS benefits. Because the Petitioner's son failed to abide by the regulations to report his income, the overissuance was client error. Though the overissuance is the result of the Petitioner's son's action or lack thereof, the Petitioner is also liable as an adult member of the household. I note that the agency has established a claim against both the Petitioner and the Petitioner's son. To my knowledge, the Petitioner's son has not appealed the claim and therefore, despite his efforts to apparently avoid repaying the agency for benefits he was not entitled to receive, he is a liable party and subject to collection action for the overissuance. I note that the agency will hopefully be able to collect the entire overpayment through its collection enforcement against the Petitioner's son which will resolve the Petitioner's liability.

I have reviewed the agency calculations of the overpayment and conclude they are accurate.

### **CONCLUSIONS OF LAW**

The agency properly seeks to recover an overissuance against the Petitioner and Petitioner's son in the amount of \$873 for the period of July, 2013 – November, 2013. The agency may commence proceedings to take any and all collections actions within its authority including wage garnishments, tax intercepts, liens and any other action allowed by law.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

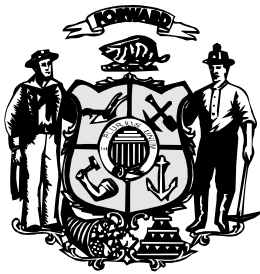
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 12th day of March, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 12, 2014.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability